

Use of Title III Funds –
*Review of Requirements &
Considerations for
+ Allowable Costs and
Supplement, not Supplant*

Webinar for Title III SEA
Directors
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We hope you are all having a good summer, and want to welcome you to this webinar on use of Title III funds. During this webinar, we'll review the requirements and considerations for use of Title III funds as well as supplement, not supplant. We chose the topics for this webinar based on the large number of questions our Title III Group has received from States in these areas.

Webinar Format

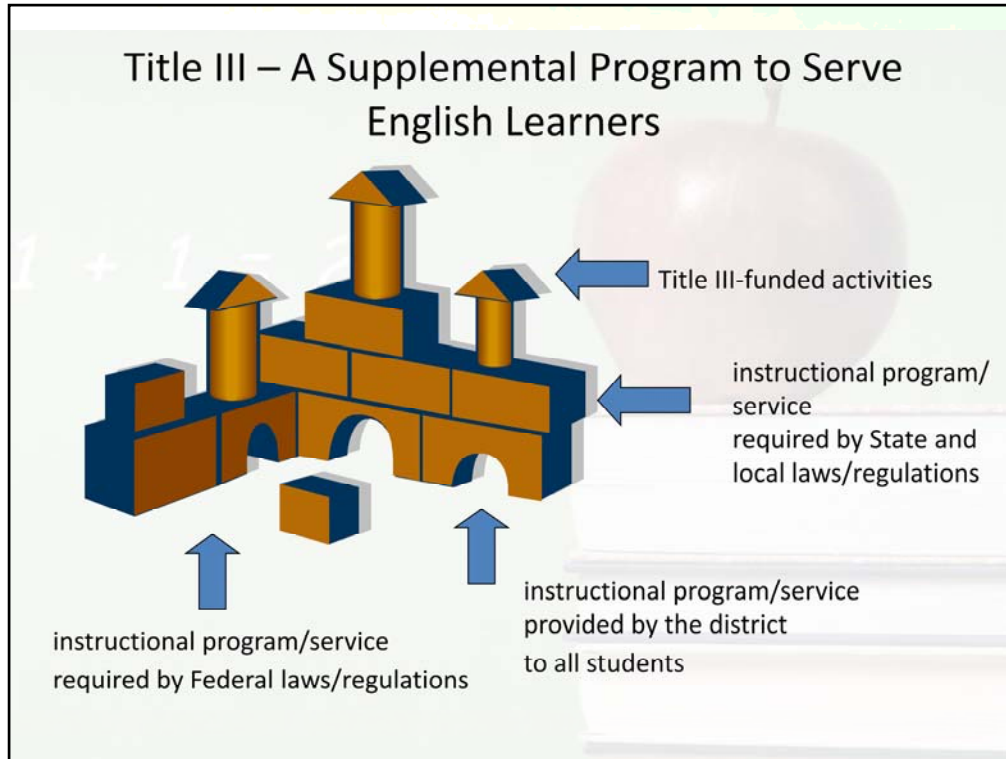
- Brief review – foundations of supplemental Title III local educational agency (LEA) programs
- Overview – cost principles, supplement, not supplant
- Questions & discussion
- Question & answer
- Informational updates - Supreet

We've designed this webinar for you to turn it around and share it with your LEAs as they finalize their Title III local plans, and consider what (if any) amendments to make to those plans and budget line items during this upcoming year. Some of the information we share will be materials you have seen before, since they are foundational – such as the slides on the basis of supplement, not supplant – but some should be new and expand and deepen your knowledge about these topics.

We'll start the webinar with a very brief review of Title III as a supplemental educational program, then provide a short overview of cost principles and supplement, not supplant.

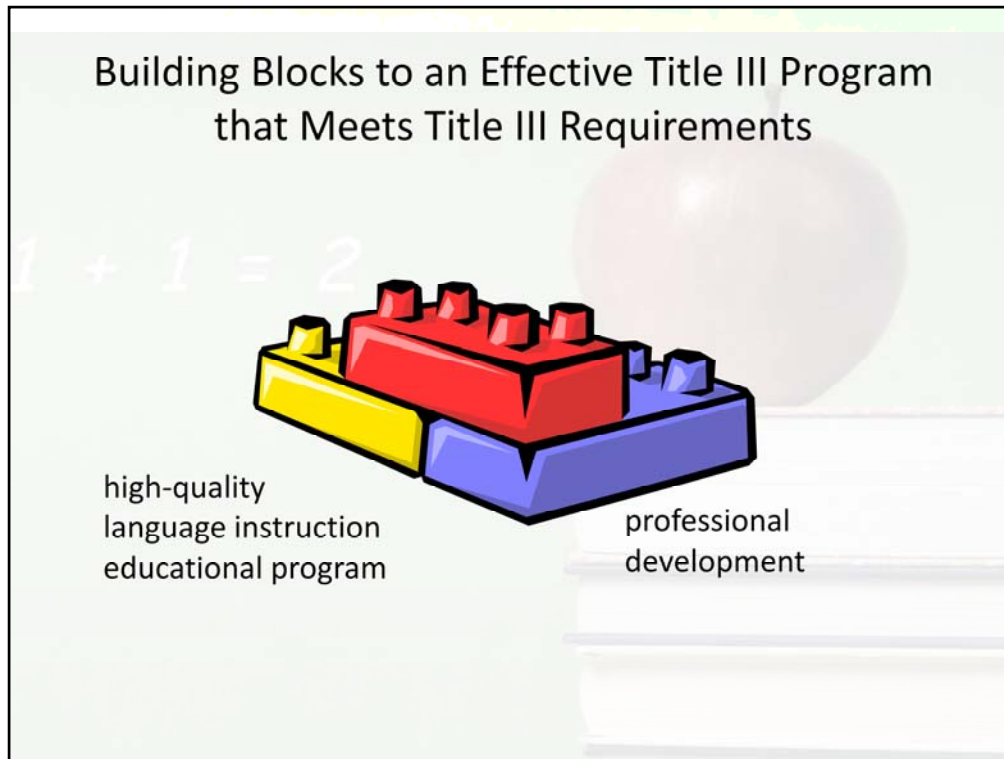
We'll then provide sample questions (with answers), and then move on to your questions.

The grand finale will be Supreet's informational updates from DC.



We'll start off with a few foundational concepts about Title III.

In this slide, we've used the analogy of building blocks as a means of thinking about the Title III program in your State. This illustration shows the role of Title III services as compared to other services for English learners (ELs) in your districts. As you know, Title III is a supplemental program. We sometimes talk about how Title III is the "icing on the cake." This illustration shows how the instructional program/services required by Federal regulations, by State regulations, and provided to all students are the foundation of services for ELs. Title III is the tower that makes the structure look prettier and more balanced, but is additional, and **ENHANCES** the program, but is not the foundation on which programs for ELs are based.



The wooden blocks structure showed how Title III is the top – the supplementary towers. Let's now get into the details of Title III, and think about blocks some more. Here is another type of interlocking building blocks – Legos - that are dependent on one another. These blocks are built upon a foundation of two required activities under Title III – providing a high-quality language instruction educational programs (LIEPs), and offering high-quality professional development (professional development). Both LIEPs and PD should be scientifically based, and focused on the aim of helping English learners learn English and achieve in the academic content areas.

All Title III activities should be carried out using expenditures that are allowable, allocable, and reasonable. The next slides will address these principles.

Reviewing LEA Applications & Amendments

Do all of the proposed expenditures meet the following criteria:

- ✓ Are they allowable?
- ✓ Are they allocable?
- ✓ Are they reasonable and necessary to carry out grant functions?
- ✓ Should they be included in the 2% limit as administrative costs?
- ✓ Do they meet supplement, not supplant requirements?

When LEAs are developing their applications and amendments, and you are reviewing them, you'll think through whether the proposed expenditures meet these standard criteria.

(Read 5 questions.)

We do want to emphasize that it is the responsibility of the SEA to ensure that expenditures meet these criteria, and that it is the responsibility of the LEAs to provide documentation to the SEA as needed to justify proposed expenditures. This is particularly the case with supplant, not supplant, where it is the burden of proof of the LEA to demonstrate to your State, through job descriptions, budgets from prior years, student-teacher ratios, and other evidence that proposed expenditures are supplemental.

Finally, and perhaps most importantly, as a first step in making supplement, not supplant determinations, LEAs should get clarity (programmatically and fiscally) on how they are and have been fulfilling the *Lau v. Nichols* requirements).

Use of Federal Funds - Criteria

Costs must be...

reasonable

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

allocable

A cost is allocable to a cost objective if the goods or services involved are chargeable or assignable to the cost objective in accordance with the relative benefits received.

allowable

A cost is allowable if it is necessary and reasonable for proper and efficient performance of the award and allocable to the award.

(OMB Circular A-87)

Activities funded under Title III must meet criteria for expenditure of education funds, be supplemental, and meet limits in the Title III statute on administrative costs.

As I mentioned, three of the broad criteria for Federal Education funds are that costs must be reasonable, allocable, and allowable. These terms are defined in the Office of Management and Budget (OMB) circulars that set forth how Federal funds can be spent, such as OMB circular A-87—along with EDGAR.

It is important to keep in mind that costs to federal awards must be accorded consistent treatment – e.g., A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

Read through definitions...

I'd like to emphasize the criteria of necessary and reasonable, which is also connected to the criterion of whether a cost is allowable. An example of a cost that is possibly supplemental and allocable, but may not be reasonable would be travel costs for all ESL teachers in the LEA to attend the national TESOL conference. It may be a more prudent use of funds to determine which teachers could benefit most from the professional development and would share the information received with colleagues upon their return, instead of wholesale funding all of the teachers in the LEA to attend TESOL.

Let's take another example of a cost States have inquired about recently – use of Title III funds to purchase whiteboards/smartboards. If a district proposes such a purchase, the SEA would need to make sure this is a supplemental cost (e.g., the LEA does not already provide whiteboards for all classrooms), and that it is necessary and reasonable to run the program. The SEA might pose a number of questions, such as...

First and foremost, how would the purchase contribute to the overall objective of a language instruction educational program?

Second, given the cost of smartboards and accompanying installation, accessories, etc., is it the best purchase for your Title III funds?

Finally, if purchased, how will the LEA ensure that it is just being used for LEP students?

These are some of the types of questions SEAs are asking about LEA use of Title III funds.

Now, let's transition to a question we often receive – are there some costs that are outright unallowable under Federal awards?

For reference:

If a grantee fails to adhere to OMB circulars, there may be False Claims Act implications and potential criminal fraud.

Examples of Unallowable Costs – for Local and State Educational Agencies

- ☐ Alcoholic beverages
- ☐ Donations and contributions
- ☐ Entertainment costs
 - tickets to shows or sports events, meals, lodging, rentals, transportation, gratuities

MAY be allowable –

- ✓ reasonable lunch for participants in a professional development activity, if there is no other opportunity to eat, and the activity is all day
- ✓ reasonable snacks for students for Title III-funded summer or after school programs, and transportation for these programs, if needed and not provided by the district
- ✓ tickets and transportation for educational field trips, if part of high-quality language instruction educational program
- ✓ reasonable refreshments for parent outreach activities

The answer is, yes, there are costs that are always unallowable, and they are listed here: alcoholic beverages & donations & contributions & entertainment costs.

Here are some costs that **may be** allowable, given that the LEA must provide sufficient information to the SEA to document that the costs are in fact allowable.

(Read through examples)

Question #1:

Would this be an allowable use of Title III funds?

A district proposes to use Title III funds to provide monthly dinners for its English learner (EL) parent advisory council. The amount proposed for these dinners is approximately 1/12 of the district's Title III allocation.

Generally, food and entertainment are not allowable, unless there is a specific reason food must be provided (such as an all-day meeting).

This cost may not be reasonable.

Advisement – No.



Let's take this information we just discussed and apply it. Think over this question.

(Read question & answer.)

Title III 2% Cap on Administrative Costs

- ❑ Districts have a limit of **2%** of the Title III grant award for administration. (section 3115(b))

- ❑ **Administration = administrative costs + indirect costs**

*Examples of **administrative costs**:*

support staff, coordinators, & other personnel that perform administrative functions

- ❑ **Indirect costs** = organization-wide costs 1) incurred for a common or joint purpose benefiting more than one cost objective, and 2) not readily assignable to the cost objectives specifically benefitted

*Example of **indirect costs**:*

utility costs

(Source: OMB Circular A-87)

We've spoken about the principles of allowable, allocable, and reasonable, so now let's talk about the Title III 2% cap on administrative costs, and what is included in administrative costs.

First, this 2% cap applies to all Title III subgrantees, BUT DOES NOT APPLY TO THE IMMIGRANT GRANTS.

Second, indirect costs rates negotiated do not apply.

Finally, the 2% cap includes both administrative costs and indirect costs.

In order to determine whether a position is **administrative**, one should examine the job function, such as through job descriptions, and if the position is split-funded, documentation of activities through PARs (Personnel Activity Reports) and Time & Effort Sheets. One should also consider how the positions were funded previously.

Indirect costs applies to costs originating with the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities.

Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

For reference:

"Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

Administrative Costs – Further Defined

- Administrative costs are associated with the overall project management and administration and which are not directly related to the provision of services to participants or otherwise allocable to the program cost objectives/categories.
- Two types of administrative costs:
 - personnel & non-personnel
 - direct & indirect

(Source: 1997 USDOE Indirect Cost Determination Guidance for State and Local Government Agencies)

Here is some further information on administrative costs.

(Read definition, and note the two types of administrative costs.)

Administrative Costs – Further Defined

- Administrative costs include those activities that pertain to establishing and administering policy for operating the LEA or with handling the overall administrative responsibilities for an LEA and program.

Examples:

Personnel – salaries & benefits for office assistants, clerks, accounting, data processing, contracted professional services, such as auditors

(Source: 1997 USDOE Indirect Cost Determination Guidance for State and Local Government Agencies)

Here is some further information on administrative costs.

(Read definition, and note that these are some samples in terms of personnel.)

Administrative Costs – Further Defined

Examples of labor costs for direct administration:

- Salaries, benefits, & other expenses of the recipient or subrecipient's staff who perform these functions:
1 + overall program management, as distinct from overall program implementation, preparing program plans & budgets, and preparing reports related to program requirements.

Examples of non-labor costs for direct administration:

- Costs for goods & services required for program administration, such as equipment purchase/rental, utilities, office supplies, postage, and rental and maintenance of office space

(Source: 1997 USDOE Indirect Cost Determination Guidance for State and Local Government Agencies)

Here are some additional definitions of administrative costs, including labor and non-labor costs.

What are Indirect Costs?

Indirect costs represent the expenses of doing business that are not readily identified with a particular grant, contract, project function or activity, but are necessary for the general operation of the organization and the conduct of activities it performs. In theory, costs like heat, light, accounting and personnel might be charged directly if little meters could record minutes in a cross-cutting manner. Practical difficulties preclude such an approach. Therefore, cost allocation plans or indirect cost rates are used to distribute those costs to benefiting revenue sources.

*(Source: USDE Office of the Chief Financial Officer (OCFO) FAQs:
<http://www2.ed.gov/about/offices/list/ocfo/fipao/abouticq.html>)*

So, what are indirect costs exactly? Here is the definition, for your reference, from an FAQ from ED's OCFO.

Indirect or Direct Costs?

Looking at it another way, indirect costs are those costs that are not classified as direct. Direct costs can be identified specifically with particular cost objectives such as a grant, contract, project, function or activity.

Direct costs generally include:

- Salaries and wages (including vacations, holidays, sick leave, and other excused absences of employees working specifically on objectives of a grant or contract – i.e., direct labor costs).
- Other employee fringe benefits allocable on direct labor employees.
- Consultant services contracted to accomplish specific grant objectives.
- Travel of employees.
- Materials, supplies and equipment purchased directly for use on a specific grant or contract.
- Communication costs such as long distance telephone calls or telegrams identifiable with a specific award or activity.

(Source: USDE Office of the Chief Financial Officer (OCFO) FAQs:

<http://www2.ed.gov/about/offices/list/ocfo/fipao/abouticq.html>)

ED's OCFO further explains indirect costs and direct costs in this FAQ.

Question #2:

Would this be an allowable use of Title III funds?

A district proposes to use Title III funds to support the salary of an administrator who will, as part of his/her duties, administer district Title III-funded activities.

This may be allowable, assuming Title III funds are only utilized to support his/her duties that are Title III-related, however, this portion of his/her salary should be assigned to the 2% administrative cost under Title III.



Again, let's take the information we just discussed and apply it. (Read question & answer)

In this example, personnel activity reports (PARs) could be important if the administrator works only a percentage of time on Title III. These PARs need to be: signed by employee and supervisor, reflective of actual work/time, reviewed & adjusted as changes occur, and must reflect actual work.

Now that we've spoken about how costs should be allowable, allocable, and reasonable, and discussed administrative and both direct and indirect costs, we can move on to supplement, not supplant.

Supplement, not Supplant Requirement - General

Title III funds must be used to supplement the level of Federal, State and local funds that, in the absence of Title III funds, would have been expended for programs for limited English proficient (LEP) students and immigrant children and youth.

(section 3115(g))

These next few slides are not new, however, they are foundational for supplement, not supplant, so we'll go over them briefly.

As you know, in order for the Federal investment in Title III to have a positive effect on the students it is intended to help—LEP students—it is essential that Title III funds be **in addition to**, and **not replace**, services that these students already receive from State, local, and other Federal funds.

However, as you also know, any determination about supplanting is **very fact specific**, and it is difficult to provide general guidelines without examining the details of a situation.

Supplement, not Supplant Requirement

Questions to Ask When Considering Whether Title III
Funds Can be Used Without Violating
the Supplement, not Supplant Requirement

1. What is the instructional program/service provided to all students?
2. What does the LEA do to meet *Lau* requirements?
3. What services is the LEA required by other Federal, State, and local laws or regulations to provide?
4. Was the program/service previously provided with State, local, and Federal funds?

Based on the answers to the above questions, would the proposed funds be used to provide an instructional program/service that is in addition to or supplemental to an instructional program/service that would otherwise be provided to LEP students (or be required to be provided by other laws/regulations) in the absence of a Title III grant?

On this slide, there are four questions that can serve as a basic framework for making decisions regarding supplement not supplant. These questions may be helpful for an LEA to use to identify those services it would provide in the absence of Title III funds.

Supplement, not Supplant Requirement -
General

**The First Test of Supplanting:
Required by Law**

The Department assumes supplanting exists if –
An LEA uses Title III
funds to provide services that the LEA is
required to make available
under State or local
laws, or other Federal laws.

To determine if supplanting has occurred under Title III, the Department uses two tests or assumptions.

This first test for supplanting is based on the Department's assumption that an LEA would use State, local, or other Federal funds to provide services that it is required to provide by State, local laws, or other Federal law. Therefore, it would violate the supplement not supplant requirement if an LEA uses Title III funds for services it is required by law to provide.

Supplement, not Supplant Requirement -
General

**The Second Test of Supplanting:
Prior Year**

The Department assumes supplanting exists if –
An LEA uses Title III funds to provide
services that the LEA provided in the prior
year with State, local or other Federal funds.

This assumption can be rebutted.

This second test is called “prior year,” but it should really be “prior years,” (plural), since, for supplement not supplant determinations, LEA and SEA budgets from the past several (2+) may need to be examined.

The Department assumes supplanting exists if an LEA uses Title III funds to provide services that it provided in prior years with State, local, or other Federal funds.

This second test could be rebutted.

To refute the “prior year” test of supplanting, the LEA would need to have contemporaneous records to confirm...

- ☐ Budget cuts were made in a number of areas, not just services for LEP students; and,
- ☐ There was in fact a reduced amount of State or local funds to pay for this activity/position; and
- ☐ The LEA made the decision to eliminate the position/activity without taking into consideration Federal funds.

This slide shows how the second test of supplanting, prior years, can be rebutted. (Briefly review points on slide.)

Question #3:

Would this be an allowable use of Title III funds?

A school district in my State has faced budget cuts for FY2011 that includes the loss of three English as a second language (ESL) teachers. Can this district use Title III funds to pay all or any part of the salary to keep one of the ESL teachers employed in the LEA as an ESL teacher?

The LEA would need to determine whether this teacher provides services that are required by Lau, and also apply the second test of supplement, not supplant – prior year – to determine whether this would be an allowable cost.



Let's take this information and apply it.

What do you think? Would this be an allowable use of Title III funds?

Read question and answer...

Remember, Lau requires that LEAs need to provide services to ensure children have access to the regular curriculum. To demonstrate compliance with the non-supplanting requirement, States and LEAs would need to be able to identify what services they would be providing in the absence of Title I and Title III funds to ensure LEP children have access to the regular curriculum. Once this has been identified, Title III and Title I funds can come in on top of that.

Question #4:

Would this be an allowable use of Title III funds?

- Consultant fees for consultant to deliver professional development session.

Yes, if training is above and beyond any training required under State law, and not required to meet Lau provisions.

- Payment of stipends to substitutes so teachers may attend professional development session during school hours.

Yes, if training is above and beyond any training required under State law, and not required to meet Lau provisions.



Here are some more examples of how you could apply the supplement, not supplant provisions to expenditures related to professional development.

What do you think? Would these examples be allowable uses of Title III funds, and also supplemental?

(Review each example and answer.)

Question #5:

Would this be an allowable use of Title III funds?

- Cost for tuition and fees for teacher to obtain ESL certification.

Yes, this may be considered supplemental, as LEAs would not normally pay these fees for all teachers.

- Cost for training and materials for English language proficiency (ELP) assessment data analysis.

Yes, if data analysis were conducted for purposes such as improvement of instruction, development of a Title III improvement plan, or related to Title III AMAOs. Note that use of Title III funds for costs associated with training provided to administer the State ELP assessment would be considered supplanting.



Here are some more examples that pertain to professional development and to data analysis.

What do you think?

(Read questions and answers.)

Note that SNS determinations are highly fact-specific, and that these are general examples, but specific circumstances might change that would make some of these activities allowable/not, such as if an activity is required by State law.

Question #6:

Would this be an allowable use of Title III funds?

-ESL curriculum development.

Yes, if the LEA can demonstrate that this curriculum development is above and beyond what is required by the school, LEA, and State.

-After school and/or summer programs, such as those that offer high-intensity language training after hours or during the summer.

Yes, if the LEA can demonstrate that these programs are above and beyond what is provided for by the school, LEA, and State.



Here are some more examples based on expenditures we have seen as we are monitoring States. Would these be allowable uses of Title III funds?

(Read questions & answers.)

Question #7:

Would this be an allowable use of Title III funds?

-Purchase of a laptop for immigrant students to use a language development software program.

If the laptop in question is something the district would not purchase unless it had received a Title III grant, i.e., is not something they are otherwise be required purchase or have been purchasing, then it would not violate the non-supplanting requirement to make such a purchase. The LEA would need to have checks in place to ensure that the laptop is being utilized for the Title III or the immigrant children and youth program, however.



What do you think? Review question and answer.

The question remains as to whether the use of Title III funds for laptops is truly a reasonable cost, given the number of uses a laptop could be put to outside of Title III. The basic point is that, when considering some supplement not supplant questions, other use of funds questions may have to be taken into account.

Question #8:

Would this be an allowable use of Title III funds?

-Textbooks that serve as a child's primary math or language arts textbook.

No. The LEA is responsible to provide this as part of the core educational program for all students.

-Supplementary textbooks or reference guides that supplement the LEA-provided textbook.

Yes, if the LEA can demonstrate that they are supplemental.



Here are yet more examples based on expenditures we have seen as we are monitoring States. Would these be allowable uses of Title III funds?

(Read questions & answers.)

We've discussed some examples that pertain to the general supplement, not supplant requirement, so let's move on to some that relate to the SNS assessment requirements.

Supplement, not Supplant – ELP Assessment

❑ Title I and Title III funds **may not** be used to administer State ELP assessments for progress because:

- Title I does not specifically authorize this expenditure, which is necessary because the requirement applies to all LEP students (not just Title I students).
- Use of Title III funds for this purpose would violate the supplement not supplant requirement since the ELP assessment is a requirement under Title I.

❑ **Neither** Title I **nor** Title III funds may be used to develop or administer ELP assessments for identification and placement purposes, except that Title III funds **may** be used for identification & placement assessments for **private school students** (if the use of such funds would not supplant other Federal, State or local funds that may be used for such purposes.)

Here is a slide for reference that explains the reasons neither Title III nor Title I funds may be used to administer either ELP assessments for progress or for placement for students enrolled in public schools.

Question #9:

Would this be an allowable use of Title III funds?

- Office supplies for the English learner student intake center.

No. Title III funds should only be used to support purchase of Title III-specific supplies, not supplies for the intake center.

- Stipend to teachers to assess newly enrolled students for English language proficiency.

No, as the LEA is obligated to assess the English language proficiency of students identified under the Home Language Survey for placement and identification purposes.



Here are yet more examples based on expenditures we have seen as we are monitoring States. Would these be allowable uses of Title III funds?

(Read questions & answers.)

Question #10:

Would this be an allowable use of Title III funds?

-ESL instructional coach whose duty is to administer the English language proficiency (ELP) assessment for placement and identification.

No, as the LEA is obligated to assess the ELP of students identified under the Home Language Survey for placement and identification purposes, however, if the LEA can demonstrate that this position is supplemental, it may be allowable to utilize Title III funds for a portion of the coach's salary to support duties unrelated to ELP assessment administration or meeting Lau obligations.

-Data clerk who enters data for Title III and Migrant Education.

*A portion of the data clerk's salary to support his/her duties directly relevant to data entry for data required under Title III could be paid for by Title III. The portion of this individual's salary to support duties for other programs should be assigned to those programs. **Documentation would need to be maintained to support this allocation.***



Here are yet more examples based on expenditures we have seen as we are monitoring States. Would these be allowable uses of Title III funds?

(Read questions & answers.)

Provision of Title III Services to LEP Students in Private Schools

Title III funds may be used for the initial English language proficiency assessments for private school students (in cases where the use of such funds would not supplant other Federal, State and/or local funds that may be used for such purposes or other legal requirements).

Title III funds can be used to pay for the initial assessment of private school students unless a state or local law prohibits it.

In fact, the LEA is ultimately responsible for ensuring that LEP students in private schools are assessed for ELP. The LEA must provide the ELP assessment if the private school requests in order to assist with identifying LEP students.

Provision of Title III Services to LEP Students in Private Schools

Annual ELP assessments:

Title III does not require LEAs to administer their State's annual English language proficiency assessments for identified English language learners in private schools.

However, LEAs are required under Title IX uniform provisions to consult with the private school officials about:

- ☐ how the Title III, Part A services provided to private schools and teachers will be assessed, and
- ☐ how the results of the assessment will be used to improve those services. *(section 9501(c)(1)(D))*

As you know, Title III does not require LEAs to administer their State's annual English language proficiency assessments for identified English language learners in private schools.

Effectiveness of services must be evaluated, however, and the ELP assessment might be one of those ways to evaluate effectiveness of services.

Use of a standardized assessment or which assessment to be used should be determined during the "meaningful consultation" process between LEA representatives and private school officials.

This concludes the first part of the webinar. Now it is time for your questions, which will be followed by "Updates from DC" by Supreet.



Your questions

Thank you!

Supreet.Anand@ed.gov

Updates from DC

- Grant Award Notifications (GANs)
- State CSA submissions for compliance with the NOI – status update
- USDE's 2010 Grantee Satisfaction Survey
- Title III Group partnership and work with the Office of Special Education and Rehabilitative Services (OSERS)

Resources



Budget tables for FY2010 awards:

<http://www2.ed.gov/about/overview/budget/statetables/11stbyprogram.pdf>

Office of Management & Budget (OMB) Circular A-87:

http://www.whitehouse.gov/omb/circulars_a087_2004/

EDGAR – (See parts 76 and 80 in particular):

<http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.pdf>

Office for Civil Rights, ELL Resources:

<http://www.ed.gov/about/offices/list/ocr/ellresources.html>

Here are some links for the resources referenced today.